



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 1, 2004

Mr. Steven D Monté
Dallas Police Dept.
City of Dallas
1400 S. Lamar St., #300A
Dallas, Texas 75215-1801

OR2004-10137

Dear Mr. Monté:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 213910.

The Dallas Police Department (the "department") received a request for specified police reports. You claim that the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Initially, we must address the procedural requirements of section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from us and state the exceptions that apply to information that is requested of it not later than the tenth business day after the date of receiving the written request for information. *See* Gov't Code § 552.301(b). You state that the department received the instant request for information on September 7, 2004. Thus, the department had until September 21, 2004 to request a decision from us and state the exceptions that apply to the information that is at issue. However, we note that the department did not request a decision from us stating such applicable exceptions to disclosure until September 27, 2004. Consequently, we find that the department failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision from us.

Because the department failed to comply with the procedural requirements of section 552.301 in requesting this decision, the information at issue is now presumed public. *See* Gov't Code § 552.302; *see also* *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The department must demonstrate a compelling interest in order to

overcome the presumption that the information at issue is now public. *See id.* Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Since the department claims that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code, we will address this claim.

You claim that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.¹ Information is protected from disclosure by the common-law right of privacy when it (1) is highly intimate and embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under section 552.101 of the Government Code in conjunction with the common-law right to privacy. *See* Open Records Decision No. 393 (1983). However, in this instance, the requestor knows the identity of the alleged sexual assault victim in this matter. Thus, we believe that withholding only the alleged victim's identifying information from the requestor in this instance would not preserve the victim's common-law privacy interests. Accordingly, we conclude that the department must withhold the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. The department must release the remaining submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by the common-law right to privacy.

have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/krl

Ref: ID# 213910

Enc. Marked documents

c: Mr. Phillip Brewster
 1008 Cold Spring
 Mesquite, Texas 75181
 (w/o enclosures)